

The case for global constitutionalism in pandemic times

Ezel Buse Sönmezocak

2020-06-06T09:00:15

As the first shock wave caused by the Covid-19 has partially passed, the conditions and effects of the epidemic and even the post-pandemic process started to be discussed among international public law scholars. So far, the “online” debates among international lawyers seem to focus on a few issues, and one of the solid topics emerging from these debates is the question of whether we are currently witnessing the [end of globalization](#).

I believe that any analysis arguing that we are witnessing the end of globalization would be precipitate and over-simplistic. The pandemic would mean the end of globalization if what we mainly understand as globalization is limited to economic terms. Cross-border movements do not only concern goods and money; and people do not only cross borders as work-forces, but also as humans. Moreover, ideas, values, information, and science cross borders, too. It may be the end of globalization’s first phase, but there will be a next phase, as has rightly been [pointed out](#). And in the next phase, I think we all will acknowledge that the transnational character of scientific information, democratic values and governance is much more “valuable” than global financial means. Indeed, the only reliable inoculation against future pandemics will be transnational cooperation. Thus, Covid-19 could mark a new era in which globalization will become a bigger issue than ever. This requires new ways of thinking about law and institutions of global governance.

In fact, we have already received the first signals. Just recently, a group of scholars submitted a concrete proposal for [European Corona bonds](#) which goes far beyond a simple financial bail-out for Europe. In this sense, it is highly remarkable that the proposal reflects a global constitutional framework by proposing that corona bonds shall not be provided to governments which fail to meet fundamental values of the EU, namely rule of law, democratic accountability and openness by means of extraordinary measures they take in relation to the pandemic. In Europe currently [the Franco-German proposal](#) for a €500 billion Recovery Fund to help the countries hit hardest by the Covid-19 is under discussion. I believe that soon we will see more clearly whether this proposal could preserve the European project by including the safeguards required for the protection of the fundamental values of the EU, such as the rule of law and democracy.

It is the first time that an event happening in one part of the world affects people all across the globe at such a pace. However, the measures taken by administrations and governments across the world, such as border closures or derogations of human rights treaties, do not make people safe. What contributes to more safety is sharing information, global governance and ensuring that no one is left behind. While scientists and doctors already share relevant data, statistics and experiences globally with each other, a comprehensive transnational governance is not in place

yet. Rather, we witness that some states refuse to share the true medical information they have or spread misinformation. The US even threatens to cut the funds of the World Health Organization.

Such a picture shows us who speaks up loudly and who is silenced. We observe that those who speak up loudly are the right-wing or populist regimes derogating from human rights conventions on the first occasion or threatening to defund the WHO. Addressing the question of who is silenced in this period, we see it is the Global South; it is women, disadvantaged groups and minorities, the countries most affected by the climate injustice, and the countries which do not access clean water, sanitation, healthcare, food and shelter.

It is true that “crisis” discourses are closely linked with state of emergencies in which state sovereignty has to be strengthened and polished at the cost of the rule of law and human rights. Indeed, crises provide excellent opportunities to states to create and normalise the exception. However, as long as we, the public international law scholars, keep on speaking from our usual, conventional zones, it is likely that those who speak up most loudly will end up shaping “the new normal” and we head towards a darker future, one in which human rights play an even more marginal role. That is why, this period, which affected the human life globally in every possible manner, proves the need for a paradigm shift of our understanding of international law.

Consequently, we are not witnessing the end of the globalisation, on the contrary, we are witnessing how the world is interconnected. We witness how a virus occurred in a single city in the world is able to put into question the existing social and economic structures, legal paradigms, and even ideologies across the world so quickly.

This reality deeply puts the state-centered and sovereignist view of the international legal order into question. Maybe the current corona crisis is the moment that pushes the people towards more unification, in the sense of Kant's idea of hospitality. In other words, “we are all in this together.” Even if the world gets over COVID-19 at some point, the next global disaster is already on the horizon – the climate crisis, which requires cooperation on all levels of governance. How much longer can the state-centred structure of international law ignore this reality? In my view, the answer requires to defend the idea of global constitutionalism with more enthusiasm than ever. Norms and institutions of global governance need to follow and respect principles of constitutionalism like the rule of law, the protection of human rights, democracy, and solidarity. I believe that a global constitutionalist approach which demands political actors, courts, and also academics as international law-makers and governance-designers to take into account the needs of humans in different cultural and economic contexts all over the globe, is the most “realistic” way to survive both current and future global crises.

[Ezel Buse Sönmezocak](#) is a PhD candidate at Koc University, Turkey.

Cite as: Ezel Buse Sönmezocak, “The case for global constitutionalism in pandemic times”, *Völkerrechtsblog*, 6 June 2020.

